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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SUPREME COURT of the UNITED STATES

OCTOBER TERM 1949

No. 388

Nicholas Korthinos, Evangelos Frangakis, Nicholas Galeos, Konstantine Manousos, John Karagianos, Vasilios Stathis, George Lemonis, Theodore Orbhanidis, Pangiotis Lazarou, George Xenos, Fotios Katsikas, Vassilios Kontoulas, Nicholas Venieris, Stavros Hadjitherodrou Theofrastos Mellessaratos, Eleftherios Economides and Constantinos Foros,
Petitioners

v

S. S. Niarchos, as Owner, Michael Piliaros, his Agent, and Gerassimos Panas, as Master, all being interested in the operation of the Steamship "CAPTAIN K. PAPAZOGLOU",
Respondents.

BARRON F. BLACK,
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OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit is reported in 175 Fed. (2d) 730 and 1949 AMC

1135. The District Court's opinion is reported only at 1948 AMC 1676, but may be found in the appendix to appellant's brief in the court below. (Appt's Appx. S, 113) Since this is a seamen's case, and the record in this Court has not been printed, references will be made to the particular appendices concerned as they were filed in the court below. These appendices are now on file in this Court and form part of the stipulated record.

JURISDICTION

In their petition for certiorari, petitioners recite that the jurisdiction of this Court is invoked under Title 28, U. S. Code, Section 1254. This statute is referred to as the sole grounds of jurisdiction, and an examination of it will disclose that this is the statute which grants to the Supreme Court the general power to review decisions of the Courts of Appeals. No specific authority is referred to as sustaining the Court's jurisdiction in this particular case. It is earnestly submitted that the statutory authority relied on by petitioners is insufficient to invoke the jurisdiction of the Court on a petition for certiarari.

STATEMENT OF THE CASE

The material set forth by petitioners under the heading "FACTS AND ISSUES", is some fifteen pages in length and appears to be more of an argument than a statement of facts. To point out the many inaccuracies contained therein, would take at least another fifteen pages; we will therefore, set forth briefly the facts as they were found to exist by the District Court and ap-

proved by the Court of Appeals. The Findings of Fact and Conclusions of Law entered by the District Court are printed as an appendix to this brief and may be found at page 27.

The petitioners joined the Greek Steamship "CAPTAIN K. PAPAZOGLOU" at various ports throughout the world between June 14, 1947 and January 16, 1948 and on January 19, 1948 the "CAPTAIN K. PAPAZOGLOU" left Hampton Roads, Virginia, bound for a round voyage to Europe. On her return to Hampton Roads on March 10th the crew was paid off in full. At this time each of the petitioners signed individual wage accounts in which they receipted in full for all earned wages due and released the vessel from any further claims. (Panas' Ex. 2 and 3.) On or about this same day those of the petitioners who were members of the deck crew were ordered to prepare the hatches for loading, but they refused, saying that they would not perform this work unless they received an extra payment of $100.00 (Appee's. Appx. 13, 14, 20). There being no basis for this demand, the master employed shore labor to perform this work (Appee's Appx. 15, 18). On March 11th these same petitioners refused to close the hatches (Appee's Appx. 13, 14 and 20), and refused to take on board provisions for the next voyage (Appee's Appx. 15, 20). For each of these services the petitioners demanded the sum of $100.00 and there being no basis for these demands, the master again employed shore labor to perform this work. On this same day, March 11th petitioners entered into a sit down strike which they termed a "protest" against the imprisonment by the Greek Government of their Union leaders (Appee's Appx. 58, 59, 60).

On March 12th the strike continued and the respond-

ent, Michael Piliaros, a Commander in the Royal Greek Navy, and a Port Official assigned to the Greek Consulate in New York, came on board to investigate (Appee's Appx. 37). The petitioners refused to cooperate with Commander Piliaros, which made his investigation more difficult (Appee's. Appx. 54, 55). It was completed, however, on March 13th and the Commander issued a written order to the master authorizing him to discharge the petitioners for "refusal of services". (Libt's Ex. 1—Appee's. Appx. 122). On receipt of this authorization to discharge petitioners, the master made a final effort to get petitioners to return to work. The pilot came on board and an attempt was made to sail the vessel, but the petitioners informed the master that they would not sail unless they were paid a certain six month's long service bonus which had formerly been payable under the Collective Agreement of 1943, but which had been abolished by a Special Collective Agreement of November 29th, 1947 (Appee's. Appx. 93, Resp's. Ex. D, 126). On their refusal to sail the vessel, the master advised the petitioners that he was discharging them but they replied that they did not recognize said discharge and would continue on the vessel (Appee's. Appx. 31, 33, 75).

Thereafter, on March 15th the owner filed a possessory libel seeking to have petitioners removed and to regain possession of his vessel (Appee's Appx| 3). Simultaneously with the filing of the possessory libel, petitioners filed a libel against the owner alleging damages for wrongful discharge plus any "wages due them". The two causes were consolidated and an immediate hearing was had, upon the completion of which the Court ruled that petitioners had no right to remain on board, and entered an order restoring possession of

the vessell to the owner (Appee's Appx. 6).

The original possessory libel and cross-libel involved fourteen seamen, and during the course of the hearing three other esamen, Mellissaratos, Foros and Economides elected to side with the original fourteen, taking the position that they would not sail unless the master would agree to pay them the six months bonus. The wages due petitioners, through the date of their discharge, were deposited in court on March 17th (Appee's. Appx. 7) and shortly thereafter drawn out by petitioners. On April 2nd, long after all testimony had been taken and the vessel had sailed, the petitioners, acting through their attorneys filed a motion demanding that certain "deductions for advances" which appeared on petitioners' wage accounts, be repaid to petitioners on the grounds that they had been made on future earnings, in violation of Title 46 U.S. Code, Section 599. On April 7th the amount of these alleged advances was deposited in Court (Appee's Appx. 8) and shortly thereafter paid over to petitioners. Thereafter interrogatories were filed by petitioners' attorneys seeking to ascertain what, if any, advances on future earnings had been made on previous voyages. Respondents excepted to these interrogatories and their exceptions were sustained by the District Court, but reversed by the Court of Appeals. The decision of the Court of Appeals as to these exceptions has been made the subject of a cross-writ of certiorari which was filed in this court on October 19th, 1949, and bears the number 407.

A final hearing was had on petitioners' libel on June 15, 1948, upon the completion of which said libel was dismissed for lack of proof. On the date of the final hearing petitioners filed a supplemental libel setting up

claims for damages resulting from alleged derogatory entries made by respondents in the seamens' books of petitioners, and claims for damages resulting from an alleged conspiracy on the part of respondents to have petitioners arrested by the Immigration authorities. No evidence was offered to sustain this supplemental libel and the same was dismissed along with the original libel. (See Opinion of District Court, Paragraph 7.) From the decree of the District Court dismissing their libel, petitioners took an appeal to the Court of Appeals for the Fourth Circuit where the decree was sustained on all points except that involving respondent's exceptions to petitioners' interrogatories, as to which the court directed that the interrogatories be answered and remanded the case for further proceedings to determine the amount of advances made on prior voyages.

SUMMARY OF ARGUMENT

A. This case concerns questions of fact only, and is clearly distinguishable from the cases cited by petitioners, hence there is no conflict as would justify this Court's issuance of a writ of certiorari. *Wisconsin Electric Co.* v. *Dunmore Co.*, 282 U.S. 813.

(1) As to whether petitioners' discharge was justified, is purely a question of fact, which was properly decided by the two courts below.

(2) There has been ~~no~~ *on* withholding of earned wages without sufficient cause.

B. The reasons set forth by petitioners for allowance of the writ are non-existent.

(1) The possessory libel point is now a moot one, but was properly decided by the court below.

(2) There has been no denial of due process of law.

(3) The question of "penalties" or "waiting time" was a factual one which was decided properly.

(4) There is no conflict among the decisions on the wage point, since this question is essentially one of fact which has been decided adversely to petitioners by two courts.

(5) The decision of the courts below as to the Continuous Service Bonus does not involve a taking of property without due process of law.

(6) There is no important question of foreign law involved here, such as would warrant the issuance of a writ.

(7) No conflict exists among the decisions as to the wrongful discharge point.

(8) A sit-down strike does amount to sufficient cause for discharge, and there is no conflict on this point.

ARGUMENT

A. THIS CASE CONCERNS QUESTIONS OF FACT ONLY

The District Court found the facts as we have set them forth in this brief, and as they are set forth in the Findings of Fact and Conclusions of Law entered herein, (Page 27 of this brief) but not as they are set forth in the petition of the seamen. Every single argument urged by petitioners is based on a distortion of the facts.

(1) THE DISCHARGE OF THE PETITIONERS WAS THOROUGHLY JUSTIFIED.

During the few days preceding their discharge the petitioners refused to obey the lawful orders of the master to open and close the hatches, (Appee's Appx. 13, 14, 15, 20) and to take on board provisions; (Appee's Appx. P. 15, 20); they engaged in an unauthorized strike, (Appee's Appx. 22, 23, 34, 35, 59, 60), and they refused to sail the vessel even though a pilot was on board and the vessel was in all respects ready to sail. (Appee's. Appx. 34,, 35.) This Court has already ruled that such conduct amounts to mutiny, so there can be no question about it amounting to sufficient justification for discharge. *Southern S.S. Co.* v. *N.L.R.B.* 316 U.S. 31.

The District Court found that the conduct described above amounted to "abundant cause for their discharge" and the Court of Appeals held that the discharges were "thoroughly justified". We earnestly submit that not only is this issue a purely factual one which has been twice decided adversely to petitioners, but, as already pointed out, there is ample evidence to support the findings of the two courts below. This Court has repeatedly held that it will not reverse a lower court's finding of fact where there is evidence to support it. *The Abbotsford,* 98 U.S. 440; *Benson Mining Co.* v. *Alta Mining Co.* 145 U.S. 428, 434; *Davis* v. *Schwartz,* 155 U.S. 631, 638; *German Savings Society* v. *Dormitzer,* 192 U.S. 125, 129;*Louis and Nash R.R.* v. *United States,* 238, U.S. 1, 10, 11; *Houston Oil Co.* v. *Goodrich,* 245 U.S. 440; *Wisconsin Electric Co.* v. *Dun-More,* 282 U.S. 813.

Neither can there be any distinction drawn between

the three seamen who intervened and the original fourteen who were named as respondents in the libel filed by the owner to regain possession of his vessel. These three admitted that they were guilty of the same conduct as the original fourteen (Appee's. Appx. 75, 76, 78, 79, 81, 82); the only difference being that the master was willing to forgive their sins and allow them to remain on board. When they were advised of this, however, they said they did not want to remain on board. (Appee's. Appx. 77, 78, 79, 81.)

Neither can it be said that the refusal of petitioners to open and close the hatches or to take on board provisions was justified. Both courts below as well as the Greek Consular representative, found that their demands in this regard were unwarranted. Furthermore, the payment of extra compensation for these services, in addition to the usual overtime paid for work in excess of eight hours, was prohibited by order of the Greek Minister of Mercantile Marine. (Resp's. Ex. K, Appee's. Appx. 132.)

(2) There Has Been no Withholding ~~or~~ of Earned Wages "Without Sufficient Cause".

All of the claims put forward by petitioners to the effect that there has been a withholding of earned wages, without sufficient cause which entitles petitioners to the benefits of the double wage provision of Title 46 U.S. Code, Section 596, were urged in the courts below, who found that there was no such withholding. Petitioners' regular wages were deposited in court to their credit on March 19th, the day after the court had ordered that the possession of the vessel be returned to the owner, and the "advances" were deposited in court five days after petitioners had filed a motion setting up

that certain sums were owed to them by reason of advances made on future earnings, even though at the time that said advances were deducted, when the crew was paid off on March 10th, they made no objection and receipted in full for all wages due.

B. NO REASONS EXIST FOR THE ALLOWANCE OF A WRIT

(1) Possessory Libel

As pointed out by the learned Court below, the question of whether or not a possessory libel was the appropriate remedy for the removal of the petitioners, is a question which has "become entirely moot" since the vessel is no longer within the jurisdiction of the Court and the petitioners are no longer on board.

But aside from the fact that the question is academic, there is no doubt but that a Court of admiralty can entertain a possessory libel for the removal of sit-down strikers, to the end that owners may have the lawful use and possession of their vessel. As pointed out by the Court of Appeals, there is ample authority to support such action.

Ward v. *Peck*, 59 U.S. 267,

The Tilton, 5 Mason 465; Federal Cases No. 14,054,

The Navemar, 303 U.S. 68,

The Oakmar, 20 Fed. Supp. 650 (DCMd.),

The Losmar, 20 Fed. Supp. 887, (DCMd.),

The Panagiotis Coumantaros (DCMd.) (unreported—Appee's. Appx. 136.)

The West Irmo, 1937 AMC 1140 (EDNY)

Benedict on Admiralty, 6th Ed. Vol. 1, p. 156.

The petitioners commenced their strike on March 11, giving as their reason, the imprisonment of their union leaders by the Greek Government, (Appee's. Appx. 59), and this strike continued until March 7th when the Court determined that they had no right to remain on board. After their conduct had been investigated by the Greek Consular representative, who determined that said strike was unjustified, and after petitioners had refused to sail the vessel, even though a pilot was on board and the vessel was in all other respects ready to sail, (Appee's. Appx. 35) the petitioners were discharged by the master. (Appee's. Appx. 75.) They continued on the vessel, however, and it became necessary for the owner to file a possessory libel in order to regain the use and possession of his vessel. To have attempted to bring replacements on board while the strikers were still there, would undoubtedly have resulted in violence, so there was nothing that the owner could do except file possessory libel.

Petitioners would like to have the Court believe that this was nothing more than a labor dispute, and that the action taken by the District Court amounted to a mandatory injunction, which an admiralty Court has no power to issue. It is conceded that strictly speaking, an admiralty Court has no power to grant injunctive relief, but it is certainly within the power of an admiralty Court to restore the use and possession of a vessel to its rightful owner when the same is being interfered with by persons who have no right to be on board. *The Tilton*, supra.

Neither can petitioners gain any support from the *Norris-LaGuardia Act*, 28 U.S. Code, Section 101-115, or the other labor statutes cited, since this Court has

held that the right to strike does not carry with it the right to disobey the lawful orders of the master. *Southern S.S. Co.* v. *N.L.R.B.*, 316 U.S. 31. Furthermore, in the instant case the "CAPTAIN K. PAPAZOGLOU" was at anchor in the exposed harbor of Hampton Roads and not safely tied to a pier, as in the *Southern S.S. Co.* case, supra. The safety of the vessel and all those on board was imperiled by the mutinous conduct of petitioners. *Southern S.S. Co.* v. *N.L.R.B.*, supra; *Rees* v. *U.S.*, 95 Fed. (2d.) 784 (CCA4); *The Niki*, 76 Fed. Supp. 1005 (DCMe.).

There is no conflict between the decisions of the 3rd and 4th Circuit on this point. The case of *In Re Georgaropoulos*, reported at 81 Fed. Supp. 411; 171 Fed. (2d) 886; and 85 Fed. Supp. 37, involved not a possessory libel, but a petition by the Greek Consul, under the Greek Treaty of 1902, 33 Stat. 2122, to elicit the aid of the United States District Court for the Eastern District of Pennsylvania in arresting and imprisoning four Greek seamen, whom the Consul desired to deport to Greece, to answer certain criminal charges that had been placed against them. The Court of Appeals refused to grant a writ of prohibition staying the proceedings in the District Court for lack of jurisdiction, and later the District Court reached the conclusion that it could not grant the relief sought since the disputes giving rise to the criminal charges were essentially wage disputes and the Treatly did not cover wage disputes. It is significant to note that no strike existed here which denied to owners the use of their vessel. Furthermore, the fact that this case holds that discharged seamen cannot be removed by the Consul under this Treaty, is all the more reason for the allowance of a possessory libel.

Nor can *The Wind*, 22 Fed. Supp. 883 (EDPa.) be considered as authority to the effect that a possessory libel does not lie to remove sit-down strikers, since insofar as this case holds that a possessory libel will not be entertained where there is a treaty granting exclusive jurisdiction to the Consul, it has been overruled by *In Re Georgakopoulos*, supra.

(2) THERE HAS BEEN NO DENIAL OF DUE PROCESS

Petitioners set up as one of the reasons why certiorari should be granted, that the decision of the Court below in upholding the determination of Commander Piliaros, the Greek Consular representative, amounted to a denial of due process of law as guaranteed by the Constitution. The initial fallacy in this argument is that neither the Court below nor the District Court based its decision on the decision of Commander Piliaros. The District Court, after hearing evidence, both from petitioners and respondents, determined that there was "abundant cause" for petitioners' discharge, and made the following findings of fact in this regard:

> "28. The libellants were not justified in their demands of $100.00 for opening the hatches, $100.00 for taking on board provisions and $100.00 for closing the hatches.
>
> 29. The sit down strike or "protest" on March 11th was unjustified.
>
> 30. The refusal of the libellants to sail the vessel on March 13th, unless they be paid the long service bonus of £20 or $80.00 was unjustified."

And on appeal the Court of Appeals, 175 Fed. (2d),

730, 732, had the following to say:

> "Likewise, little need be said as to the claim for severance pay or damages for alleged wrongful discharge, since there can be no question but that, with the exception hereafter noted, the discharges were thoroughly justified. Apart from the finding of the Port Captain that they were proper under Greek law, and that the contentions of the seaman were without foundation, there can be no question as to the right of the master to discharge the seamen in view of the fact that they not only had refused to perform their duties because of a disagreement over the interpretation of their contract of employment, but also had engaged in a strike as a protest against governmental action of which they did not approve....."

There is no conflict between the decision of the court below and the cases cited by petitioners, since they each involve a different set of facts.

(3) The Courts Below Properly Decided the Question of "Waiting Time".

Petitioners take the position that they are entitled to "double wages" by virture of Title 46 U. S. Code, Section 599, on the "advances" which the court below found that they were entitled to. On this point the District Court (1948 AMC 1676, 1680) had the following to say:

> "There was no demand in the libel for the alleged advances. No complaint of the reten-

tion of deductions was urged initially. Only when the respondents deposited in the court the wages owing to the libellants, which had heretofore been declined by the seamen, did the latter assert a claim for advances, the items thereof appearing on the wage accounts accompanying the deposit in explanation of the amounts due. Without delay the sum of advances was deposited in court and withdrawn. Such conduct on the part of the master and owners evinces no refusal or neglect "to make payment" within the meaning of 46 U. S. Code, sec. 596. It was certainly not an "arbitrary or wilful" refusal or neglect, so as to warrant the penalty. *The Easterner*, 4 Cir., 47 F. (2d) 605, 1931 A. M. C. 485; *Glandzis* v. *Callinicos* 2 Cir., 1944 A. M. C. 188, 140 F. (2d) 111; *Collie* v. *Ferguson*, 281 U. S. 52, 1930 A. M. C. 408.

It must be remembered that the statute prescribing advances does not contain the "waiting time" penalty. It merely allows the seamen to recover as if the advances had not been made. Thus the respondent is required to pay that amount again as the civil penalty for making the advances. To add to this the double pay provisions of 46 U. S. Code, sec. 596 would seem to be placing a penalty on a penalty, for which we find no authority.

The argument of the libellants for such duplication of penalties is that the advances are treated as deductions, that such amounts are therefore withheld from the seamen and that

> thereby they become moneys refused or neglected to be paid, justifying the imposition of the double penalties under section 596. The practical answer is the actuality that the advance was received and was not withheld — at least its recipt has never been controverted in this case. True, the respondents may nevertheless have violated the statute, representing a fixed policy in the American maritime law not subject to equitable adjustment, but the respondents have paid the penalty of advances, and such advances should not be construed as a retention in order to embrace another penalty. The statute never contemplated that a payment in fact, although not valid as a credit, should in law become a retention."

On appeal the Court of Appeals held that it was clear that there had been no withholding "without sufficient cause", hence it was not necessary to pass on the ruling of the District Court that the double wage provision of Title 46, U. S. Code, Section 596, has no application where the entire wages have been paid when the advances are considered as payments. In support of its ruling that there was no witholding without sufficient cause, the Court of Appeals (175 Fed. (2d) 730, 733) had the following to say:

> " We do not think, however, that the failure to pay again the amount of advances after there has been a settlement in good faith and the amount of wages due the seamen has actually been paid with no question raised as to the legality of the advances, can be said to be

a failure to pay wages "without sufficient cause", so as to subject the vessel to a claim for double wages under the provisions of 46 U. S. C. A. Section 596. See The Velma L. Hamlin, 4 Cir., 40 F. 2d 852; The Easterner, 4 Cir., 47 F. 2d 605; Collie v. Ferguson, 281 U. S. 52, 50 S. Ct. 189, 191, 74 L. Ed. 696. As said in the case last cited: "The phrase 'without sufficient cause' must be taken to embrace something more than valid defenses to the claim for wages. Otherwise, it would have added nothing to the statute. In determining what other causes are sufficient, the phrase is to be intepreted in the light of the evident purpose of the section to secure prompt payment of seamen's wages (H. R. Rep. 1657, Committee on the Merchant Marine and Fisheries, 55th Cong., 2d Sess.), and thus protect them from the harsh consequences of arbitrary and unscrupulous action of their employers, to which, as a class, they are peculiarly exposed."

Furthermore, in *Glandzis* v. *Callinicos*, 140 Fed. (2d) 111, the Court of Appeals for the Second Circuit held that where the Greek Embassy and the District Judge had determined that no wages were due, there was no withholding without sufficient cause. In the instant case both the Consular representative and the District Court determinded that no wages were due.

The fact that it was the master who made the deduction does not mean that the owner was not entitled to a "reasonable time to investigate the circustances", after the demand for the repayment of these advances

had been made, since the master was at sea at the time, bound for a foreign port, and there was no way in which he could be immediately contacted.

Neither is there any conflict between the decision of the court below and the cases cited by petitioners, since in none of these cases was the question of penalties on advances considered.

(4) The Claim for Wages.

Petitioners set up as their fourth reason why certiorari should be granted, the refusal on the part of the Court of Appeals to award petitioners all wages claimed by them. They allege that since the court below did not allow them all the wages they claimed, that the decision of this court is in conflict with the Seamen's (LaFollete) Act of March 14, 1915, 46 U. S. Code Section 597, and various decisions of the Court of Appeals for the Second Circuit. If we were to follow this argument to its logical conclusion, it would mean that this Court should grant certiorari in every case in which recovery is denied to a seaman. It is earnestly submitted that the question of whether or not petitioners are entitled to any additional sums as wages, is a question of fact which has been twice determined adversely to petitioners. Since each case of this type must stand on its own set of facts, it is impossible for a decision in one Circuit to be in conflict with a decision in another Circuit.

(5) The Continuous Service Bonus.

The Continuous Service Bonus claimed by petitioners is a bonus of £20 or $80.00 which was paid during the War to Greek seamen as a substitute for

the indemnities provided by Article 361 of the Greek Commerical Code, (which article provided for the payment of indemnities and repatriation to Greece, of seamen discharged without sufficient cause, but could not be enforced during the War due to the occupation of Greece).

On September 2, 1943, certain representatives of the Greek Maritine unions negotiated an agreement covering the wages, working conditions, etc., of Greek seamen on Greek ships. This agreement came to be known as the "Collective Agreement of September 2, 1943", (Resp's. Ex. A, Appee's. Appx. 121) and by virtue of Act No. 3276 of 1944, (Resp's. Ex. B. Appee's Appx 124) enacted by the Greek Government in exile, it becoming binding on all Greek seamen. Under the terms of this agreement any seaman completing six months continuous service was to receive a bonus of £20. After the War was over and it again became possible to apply the provisions of Article 361 of the Greek Commerical Code, the Greek seaman and the Greek shipholders negotiated a Special Collective Agreement (Resp's. Ex. D, Appee's Appx. 126) doing away with this bonus. This Special Collective Agreement was ratified by the Greek Minister of Mercantile Marine (Resp's. Ex. G, Appee's. Appx. 129) and became binding on all Greek seamen on November 30, 1947. Petitioners take the position that since their union was not a party to the Special Agreement, that the same is not binding as to them. It is true that the OENO, the union to which petitioners allegedly belong, was not a party to this second agreement, but the same is none the less binding on petitioners. Act No. 3276 of 1944 gives to the Greek Minister of

Mercantile Marine the "free discretion" to decide which unions he considers as representative of the Greek seamen. The OENO was apparently not considered as representative and was dissolved by the Greek Government in January, 1948, for cooperating with the Communist Party of Greece. (Appee's. Appx. 95, 96, 97 and Resp.'s Ex. E, Clinia's Deposition)

The wages of a seaman on board a Greek ship are not fixed by written articles as in the case of an American ship, but instead, the same are regulated by law. This was pointed out by the Court of Appeals for the 2nd Circuit in *Glandzis* v. *Callinicos*, supra, at page 113:

> "It was proved at the trial that by Greek custom the personnel of vessels of that nationality do not sign articles upon beginning their service. Compensation and other incidents of employment are regulated by law. * * * * *"

And this was also recognized by the District Court in the instant case, at page 1679:

> "* * * * The Special Collective Agreement received the approval of the Minister of Mercantile Marine of Greece, and theupon it became binding upon all seamen and shipowners in accordance with the duly enacted laws of Greece, particularly the Act No. 3276 of 1944."

A case almost identical to the instant case was considered by the King's Bench Division in July, 1948. This case, *Galaxias* S. S. *Co.* v. *Christofis*, 81 Llyod's List, Law Reports 500, involved a group a striking Greek seamen who, after they were discharged, re-

fused to leave the vessel. The owners brought an action for damages plus an injunction restaining the seaman concerned from trespassing on the vessel, and the seamen brought a cross action claiming, among other things, the same bonus sought here. Mr. Justice Sellers, after going into the facts in great detail, ruled that the conduct of the seamen was unjustified, that the injuction would lie, and that the seamen were entitled to nothing on their cross claim.

Furthemore, it should be pointed out that no claim for this bonus is set up in either the libel or the supplemental libel filed herein, and at the trial no effort was made to prove that petitioners were entiled to the same. Respondents have every reason to believe that any bonuses earned prior to the effective date of the new agreement, were paid to those entitled to it; in any event, the burden is on petitioners to prove that they were not paid, which burden they have failed to meet.

Nor is there any conflict between the decision of the court below and the cases cited by petitioners to the effect that our courts will not enforce contracts which are contrary to our public policy since none of the cases cited involved a factual situation in any way comparable to that existing in the instant case. The court below held that the bonus was no longer payable because it had been abloished by a subsequent collective agreement, which, when ratified by the Greek Minister of Mercantile Marine, became binding on all Greek seamen by virture of an act of the legislative body of Greece. It has already been pointed out that Greek seaman do not sign written articles as do American seamen, but instead their wages are regulated by law; certainly there is nothing contrary

to American public policy in such an agreement.

Finally, petitioners contend that the decision of the court below is contrary to *Zambelous* v. *Theofana Maratime Co., Ltd.*, decidied by the Circuit Court for the City of Newport News, Va. in March, 1949. We are not advised as to the nature of the holding of the court in this case, and no citation is given, but if we concede for the sake of argument that said decision is contrary to that reached by the court below, there is still no conflict as would warrant this Court's issuance of a writ of certiorari. It is well settled that the substantive admiraly law is in the control of the federal government, and not that of the states. *Crowell* v. *Benson*, 285 U.S. 22. Furthermore, this Court has said that the conflict must be between the *highest* court of a state and the Court of Appeals. *Beales* v. *Hale*, 4 How. 37, 54. It is also significant to note that the case cited by petitioners was decided in March, 1949, whereas the District Court reached its decision in the instant case in July, 1948.

(6) THERE IS NO IMPORTANT QUESTION OF FOREIGN LAW INVOLVED HERE.

Petitioners contended that this Court should grant certiorari because an important question of foreign law is involved as to which there exists a conflict among the decisions of the courts that have construed this law. In this connection they refer to Articles 361 and 362 of the Greek Commerical Code. As to Article 361, both parties agree on its meaning, that is, they agree that it provides that when a Greek seaman is discharged without sufficient cause, he is entitled to be paid an indemnity equal to so many months

wages plus repatriation. The dispute exists only as to the application of this article, and is purely one of fact. The petitioners contend that their discharge was unjustified and the two courts below have found that it was justified. Certainly the determination of such a factual issue does not constitute grounds for certiorari.

Neither is there any conflict as to the lower court's construction of Article 362 since to the best of respondent's knowledge this is the only American court that has construed this article. Petitioners have cited no authority to the contrary. Furthermore, to construe this article as petitioners contended it should be construed, that is, to the effect that Greek seamen are entitled to remain on board until all of their claims against the vessel have been satisfied, would be contrary to American public policy.

(7) THERE IS NO CONFLICT AMONG THE DECISIONS AS REGARDS THE HOLDING OF THE COURT BELOW THAT THE DISCHARGES WERE "THOROUGHLY JUSTIFIED".

The *Steel Trader*, 275 U. S. 388, cited by petitioners, is clearly distinguishable from the instant case, for in that case there was no strike, nor was there a refusal on the part of the seamen concerned to obey the lawful orders of the master. The facts existing in the instant case are almost identical to those considered by this Court in *Southern S. S. Company* v. *N. L. R. B.*, supra, wherein this Court held that the discharge of the seamen was justified since their conduct amounted to mutiny.

Neither is there any conflict with the decision of

the Third Circuit in the *Petition of Therianos,* (*In Re Georgakopoulos*) supra, for the only issue before the Court in that case was the construction of the Greek Treaty (Consular Convention) of 1902, and whether or not a writ of prohibition should issue against the District Court staying proceedings on a peatition of the Greek Consul to elicit the aid of the District Court in removing certain seaman from a Greek vessel. The Court determined that the writ should not issue.

Neither are the other cases, cited by the petitioners in conflict with this case, since each of them involved an entirely different set of facts. There is ample authority to support the action of the court below on this point. *Southern S. S. Company* v. *N. L. R. B.*, supra; *N. L. R. B.* v. *Fansteel,* 306 U. S. 240; *Galaxis S. S. Co.* v. *Christofis,* supra.

(8) A Sit- Down Strike Aboard a Foreign Vessel at Anchor in an American Harbor is Sufficient Grounds for Discharge of the Strikers and There is no Conflict on this Point.

We have heretofore pointed out that the strike on board the CAPTAIN K. PAPAZOGLOU while said vessel was at anchor in the exposed harbor of Hampton Roads, coupled with the strikers' refusal to obey the lawful orders of the master, amounted to mutiny, so there can be no question but that their conduct was sufficient to warrant their discharge. *Southern S. S. Co.* v. *N. L. R. B.*, supra; *N. L. R. B.* v. *Fansteel,* supra.

Nor is there any conflict among the decisions of other Circuits on this point. We have already dis-

kapoulos, supra, decided by the Third Circuit. And *The Sonderborg*, 47 Fed. (2d) 723, cited by petitioners is not a decision of another Circuit, but a prior decision of the Fourth Circuit. Aside from this fact, however, it is significant to note that there was no issue of wrongful discharge involved in *The Sonderborg*.

C. CONCLUSION

An analysis of this case will disclose that petitioners have based their whole case on a distortion of the facts, and if the case is viewed in light of the facts as they were found to exist by the two courts below, which facts are fully supported by the evidence, the conclusion is inevitable that no reasons exist here for the issuance of a writ of certiorari.

Of course the jurisdiction of this Court on questions of certiorari is largely discretionary, yet, it is submitted, that due consideration should be given to the fact that petitioners have already received two full hearings of their contentions and two courts have concurred in rejecting them. *Houston Oil Co.* v. *Goodrich*, 245 U. S. 440. Furthermore, it has been clearly demonstrated that the questions involved here are essentially questions of fact and this Court has said that it will not grant certiorari to "review evidence and discuss specific facts". *U. S.* v. *Johnson*, 268 U. S. 220. Nor is it granted to merely give the defeated party in the

Court of Appeals, another hearing. *Magnum Import Co.* v. *Coty*, 262 U. S. 159.

We respectfully ask that the writ be denied.

BARRON F. BLACK,
HUGH S. MEREDITH.
Counsel for Respondents.

Norfolk, Virginia

SUPREME COURT
of the
UNITED STATES

No. 388

Nicholas Korthinos, Evangelos Frangakis, Nicholas Galeos, Konstantine Manousos, John Karagianos, Vasilios Stathis, George Lemonis, Theodore Orbhanidis, Pangiotis Lazarou, George Xenos, Fotios Katsikas, Vassilios Kontoulas, Nicholas Venieris, Stavros Hadjitherodrou Theofrastos Mellessaratos, Eleftherios Economides and Constantinos Foros,
Petitioners

v

S. S. Niarchos, as Owner, Michael Piliaros, his Agent, and Gerassimos Panas, as Master, all being interested in the operation of the Steamship "CAPTAIN K. PAPAZOGLOU",
Respondents.

APPENDIX

FINDINGS OF FACT AND CONCLUSION OF LAW

From the evidence adduced at the trial of this cause, the court makes the following findings of fact:

1. The ss CAPT. K. PAPAZOGLOU is a large

ocean going vessel of Greek registry and owned by S. S. Niarchos, a citizen of Greece.

2. The libellants in suit No. 7190 are all citzens of Greece and at the time of the occurances involved in these suits, they were crew members of the CAPT. K. PAPAZOGLOU. Hereinafter these seamen will be referred to as "libellants", "individual respondents," or "seamen", and S. S. Niarchos, the libellant in suit No. 7191 will be referred to as a "respondent", or "owner".

3. On or about January 19, 1948, the ss CAPT. K. PAPAZOGLOU, with libellants as members of its crew, sailed from Hampton Roads on a voyage to France, and thereafter returned to Hampton Roads on or about March 8, 1948.

4. On March 10, 1948, at the completion of the voyage, the whole crew of the PAPAZOGLOU, which included all of the libellants, were paid their wages in full in the amount shown in the statement of Wage Accounts.

5. On or about March 10, 1948, those of the libellants who were members of the deck crew received orders from those in charge of the vessel, to open the hatches preparatory to loading. They refused to carry out this order saying that they would not do so unless they were paid extra compensation in the sum of $100.00 whereupon it became necessary for the master to employ shore labor to perform this work.

6. On dor about March 11, 1948, after the loading of cargo had beeen completed, those of the libellants who were members of the deck crew, refused to carry out the orders of those in charge of the vessel to close

the hatches, saying that they would not do so unless they received extra compensation in the sum of $100.00, whereupon it became necessary for the master to employ shore labor to perform this work.

7. On or about March 11, 1948, the libellants refused to carry out the orders of those in charge of the vessel to assist in the taking on of provisions. They demanded extra compensation in the sum of $100.00 before doing this work, whereupon it became necessary for the master to employ shore labor to do this work.

8. On or about March 11, 1948 libellants engaged in a work stoppage, or "sit-down strike" which they called a "protest", on the grounds that their union leaders in Greece had been imprisoned by the Greek Government.

9. On or about March 12, 1948, at the request of the owner, Commander Michael Pilliaros, a duly authorized representative of the Royal Greek Consulate in New York, came on board and conducted an investigation to determine whether libellants were guilty of such conduct as would warrant their discharge under the Greek law.

10. As a result of his investigation, Commander Piliaros, on March 12, 1948, issued a written order to the master authorizing him to discharge all of the libellants without the payment of any compensation whatsoever on the grounds that they were guilty of such conduct as would warrant their discharge.

11. On or about March 13, 1948 after the pilot had come on board, and the ship was in all respects ready to sail, the libellants all declared to the master that they would not sail the ship unless he would

promise to pay them, when earned, a six months long service bonus.

12. On March 13, 1948 after the libellants had refused to sail the ship, the master discharged the original 14 libellants in accordance with the written authority of Commander Piliaros and placed entries in their seamen's books that they were being discharged pursuant to commission of the Consular Port Authority for "refusal of services".

13. After their discharge the original 14 libellants declared that they did not recognize the discharge and that they intended to remain on board the ship.

14. On March 15th., 1948, the original 14 libellants filed a libel, Suit No. 7190, against the owner, master and others, alleging that the master had attempted to discharge them without complying with Article 361 of the Greek Commercial Code and that they were therefore entitled to the "indemnification" provided for by that Article plus "any other wages due them".

15. On March 15th, 1948, after the libellants had filed their libel, the owner filed a possessory libel, Suit No. 7191, against the vessel and the fourteen original libellants, alleging that they had been discharged and that they refused to leave the vessel, and praying that the Marshal take possession of the vessel, remove the libellants therefrom and return the possession of the vessel to her owner. A Show Cause order was issued pursuant to this libel, which order directed the libellants to show cause, if any they had, why they should not be removed from the vesel, service of which order was ~~attempted~~ effected by the Proctor for the individual respondents.

16. On March 16 and 17, 1948, a hearing was had on the Show Cause order and upon the announcement of the Court that the individual respondents were not entitled to remain aboard, the said respondents, pursuant to the assurance of their proctors that they would do so, left the ship and on March 18th., an order was entered directing the Marshal to deliver possession of the vesel to her owner.

17. During the course of the hearing on the possessory libel, three other crew members of the vessel T. Mellissoratos, K. Foros and E. Economidis, elected to side with the other fourteen libellants and thereafter they were treated as libellants and individual respondents; and they did not work after March 17, 1948, and on March 18, 1948 they reported on board but they were required to waive any claim for bonus payments as a condition precendent to their employment and refusing to do so they left the ship.

18. On March 19, 1948, respondents deposited in the registry of the court the wages due the libellants up to and including the date of their discharge. Shortly thereafter these sums were drawn out by the libellants. On March 27, 1948, amended wage accounts of four seamen were filed and a deposit of $16.00 was made representing the amounts due under the amended amounts.

19. On April 2, 1948, libellants' proctor filed a motion in this cause alleging that certain pay accounts which respondents had introduced into evidence, disclosed that advances had apparently been made to certain of the libelants, which advances, it was alleged, were prohibited by Title 46 U. S. C., section 599.

20. On April 7, 1948, respondents deposited in the registry of the court, without prejudice to any of their defenses to the libel, the sum of $1800.00 to the credit of certain of the libellants, which sum represented the amount of the alleged advances. On April 15, 1948, these sums were ordered drawn out by the libellants concerned.

21. On June 15, 1948, the date of the trial on the merits, the libellants filed a supplemental libel claiming damages for alleged derogatory enteries made by the master in the seamen's books of the libellants, and damages for an alleged conspiracy on the part of respondents to have the libellants arrested by the Immigration Authorities after their discharge.

22. The entries in the seamen's books were made in accordance with the instructions of Commander Piliaros, the Consular representative, with the exception of the entries made in the books of Economidis and Foros, which were made in error and later removed.

23. The evidence offered did not support the matters alleged in the supplemental libel filed on June 15th., and the evidence taken shows that the libellants were lawfully put ashore by order of the court after a full hearing.

24. The libellants were discharged for abundant cause.

25. The libellants have been paid all wages due them.

26. There was no delay in the tender of payment of wages.

27. The libellants were given an opportunity at the trial on the merits on June 15th., to produce evidence of advances on voyages prior to the last voyage, but they failed to produce any competent evidence of such advances.

28. The libellants were not justified in their demands of $100.00 for taking on board provisions, and $100.00 for closing the hatches.

29. The sit-down strike, or "protest" on March 11 was not justified.

30. The refusal of the libellants to sail the vessel on March 13th., unless they be paid the long service bonus of £20 or $80.00, was unjustified.

31. Commander Michael Piliaros was a Port Captain and a duly authorized representive of the Greek Government with the duty of advising and directing Greek Owners, Masters and seamen in the adjustment of disputes arising on Greek ships in American waters. He boarded the ss CAPT. K. PAPAZOLOU by authority of his position, and at the request of her owners to inquire and dispose of the controversy between the seamen and the master and the owner of the vessel. In doing so he acted courageously, fairly and in strict accordance with the obligations of his office.

CONCLUSIONS OF LAW

1. For reasons stated in its two memoranda of May 27th., and June 4, 1948, respondents were not required to answer the interrogatories filed by the libellants respecting advances, if any, made prior to the last voyage.

2. A possessory libel with a Show Cause order thereon was an appropriate procedure to follow in removing the libellants from the vesel after they had been dischaged.

3. The decision of the court announced on March 17th., requiring the libellants to leave the ship was not in violation of the Immigration laws.

4. Article 362 of the Greek Commercial Code did not give the libellants a right, after they had been discharged, to remain on board and attempt an "in invitum" occupancy of the vessel to force the master to accede to their demands.

5. The discharge of the libellants for sufficient cause relieved the respondents of any obligation to pay passage money back to Greece or any of the indemnities provided for by Article 361 of the Greek Commercial Code, which indemnities are payable only for discharge without sufficient cause.

6. The wages of the libellants were fixed by the Collective Agrement of September 2, 1943, between representatives of the Greek seamen and representatives of the Greek ship owners, and the £20 long service bonus provided for in this agreement was rescinded by the Special Collective Agreement of November 29, 1947, which became effective November 30, 1947. This Special Collective Agreement became binding upon all Greek seamen and ship owners.

7. No extra compensation is payable to Greek seamen for opening the hatches, taking on of provisions, or for closing the hatches.

8. The "Request for Admission of Genineness of Documents", which was filed the day after the case

had been submitted, was filed too late and was not considered by the court.

9. The motion for summary judgment filed eight days after the case was submitted, was filed too late and is denied.

10. The supplemental libel should be dismissed for insufficient evidence to sustain its allegations.

11. No penalities under Title 46, U. S. C., Section 596 are owed to the libellants.

12. The libellants have failed to make out a case of any kind for recovery against Michael Piliaros.

signed: ALBERT V. BRYAN
United States District Judge.

Norfolk, Virginia,
July 28, 1948.

OCT 19 1949
CHARLMORE CROPLEY
CLERK

CROSS PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1949

No. 407

NICHOLAS KORTHINOS, EVANGELOS FRANGAKIS, NICHOLAS GALEOS, KONSTANTINE MANOUSOS, JOHN KARAGIANOS, VASILIOS STATHIS, GEORGE LEMONIS, THEODORE ORBHANIDIS, PANGIOTIS LAZAROU, GEORGE XENOS, FORTIS KATSIKAS, VASSILIOS KONTOULAS, NICHOLAS VENIERIS, STAVROS HADJITHERODROU, THEOFRASTOS MELLISSARATOS, ELEFTERIOS ECONOMIDES, CONSTANTINE FOROS,
Petitioners—Cross-respondents,

vs.

S. S. NIARCHOS, as Owner, MICHAEL PILIAROS, his Agent, and GERASSIMOS PANAS, as Master; all being interested in the operation of the Steamship "CAPT. K. PAPAZOGLOU",
Respondents—Cross-petitioners.

GEORGE M. LANNING,
BARRON F. BLACK,
HUGH S. MEREDITH,
Counsel for Petitioners.

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SUPREME COURT
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No. .....

NICHOLAS KORTHINOS, EVANGELOS FRANGAKIS, NICHOLAS GALEOS, KONSTANTINE MANOUSOS, JOHN KARAGIANOS, VASILIOS STATHIS, GEORGE LEMONIS, THEODORE ORBHANIDIS, PANGIOTIS LAZAROU, GEORGE XENOS, FORTIS KATSIKAS, VASSILIOS KONTOULAS, NICHOLAS VENIERIS, STAVROS HADJITHERODROU, THEOFRASTOS MELLISSARATOS, ELEFTERIOS ECONOMIDES, CONSTANTINE FOROS,
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S. S. NIARCHOS, as Owner, MICHAEL PILIAROS, his Agent, and GERASSIMOS PANAS, as Master; all being interested in the operation of the Steamship "CAPT. K. PAPAZOGLOU",
Respondents—Cross-petitioners.

CROSS PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

To The Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your cross-petitioners, S. S. Niarchos, Michael Piliaros and Gerassimos Panas, pray for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit to review a final judgment of that Court. Your cross-petitioners will be hereinafter referred to as "respondents" and the cross-respondents named above as "libellants".

The opinion of the Court below is reported in 175 Fed. (2d) 730, and 1949 A. M. C. 1135. The District Court opinion is reported only in 1948 A. M. C. 1676, but may be found in Appellants' Appendix in the court below (Appellants' App. S, 113) which forms a part of the appendix record in this case. Since this is a seaman's appeal and the record has not been printed, references will be made to the particular appendix concerned.

SUMMARY STATEMENT OF THE MATTER INVOLVED

This proceeding arises out of a sit down strike on board the Greek S/S CAPT. K. PAPAZOGLOU while she was in the port of Hampton Roads, Virginia, during the month of March, 1948. As the result of their unauthorized conduct, the strikers were discharged, but they refused to leave the vessel. The owner thereupon filed a possessory libel against the vessel to effect their removal (Appellees' App. 3). Simultaneously with the filing by the owner of the possessory libel, the seamen

themselves filed a libel against the owner, the master, and one Michael Piliarios, the Greek Consular representative who had authorized their discharge (Appellees' App. 1). The seamen's libel alleged damages under the Greek law for unjustified discharge plus any wages due them. An immediate hearing was had as a result of which the prayer of the owner's possessory libel was granted and the seamen were ordered off the ship. Thereafter on April 20, 1949, long after the wages due the seamen on discharge had been deposited in Court and drawn out by the seamen concerned, proctors for the libellants filed fourteen interrogatories addressed to the respondents (Appellees' App. 9). Respondents answered certain of these interrogatories and filed exceptions as to the others (Appellants' App. F., G., 85, 87). The District Court sustained these exceptions giving its reasons therefor in two written memoranda (Appellants' App. H., I., 88, 90). The case then proceeded to trial on the merits, upon the completion of which the libel against respondents was dismissed (Appellants' App. R., 112). The seamen then appealed to the Court of Appeals for the Fourth Circuit. The Court of Appeals affirmed the District Court on all points except the one involving respondents' exceptions to the first interrogatory. This interrogatory is worded as follows:

> "List the advances made to each of the libellants from the time of employment until the libellants were forced to leave the vessel, giving the name of the libellant to whom the advance was made, the date, the place, and the amount of the advance. Verify this list by furnishing the respective wage accounts of each of the libellants, covering each voyage from the time of employ-

ment until the libellants were forced to leave the vessel."

The District Court sustained respondents' exceptions to this interrogatory on the grounds, among others set forth in the two memoranda of the District Court, that the libellants had made no showing of any justification for the production of this data, and that respondents were entitled to claim their privilege against self-incrimination. This interrogatory seeks the discovery of advances made contrary to Title 46, U. S. Code, Section 599, which section, in addition to granting a civil cause of action, provides for a penalty involving fine and imprisonment for anyone paying a seaman wages in advance of the time that he has earned the same. On appeal the Court of Appeals for the Fourth Circuit reversed the District Court, ruling that this interrogatory should be answered.

In reversing the District Court the Court of Appeals did not comment on libellants' failure to show any justification for the production of this data, but instead confined its discussion to the self-incrimination plea.

> " . . . It appears that in the case of the *Papazoglou*, the seamen have obtained the information as to wage payments sought by interrogatory. If upon the further hearing of the case, however, the answer to the interrogatory should become material, we see no reason why the vessel should not be required to answer it. The inquiry is unquestionably relevant and the privilege against self incrimination has no application to the records of a vessel, which are not the private records of the person making them which

> the constitutional provision would protect. See *White* v. *United States*, 322 U. S. 694, 700." (175 Fed. (2d) 730, 734).

Here the Court of Appeals says that it appears that the seamen have already obtained this information. They are referring to the fact that the Circuit Court for the City of Newport News, Virginia, in an identical suit between the same parties, required the respondents to produce the same wage accounts, which are sought here. They were produced, however, pursuant to court order and over respondents' objections, hence, it cannot be said that they were voluntarily relinquished. Furthermore, they were not produced in the state court until after the trial on the merits in the District Court.

These accounts were prepared by the master in three copies. The original was sent to the owner, the second copy given to the seaman concerned, and the third copy retained by the master. A sample copy of the wage account form used by the master of the S/S "CAPT. K. PAPAZOGLOU" is attached to the brief accompanying this petition. The original accounts covering the voyage ending on March 10, 1948, are already in evidence (Panas Ex. 2, 3).

JURISDICTION

The jurisdiction of this court is invoked under Title 28, U. S. Code, Sections 1254, 2101, and Rule 38 of the General Rules of the Supreme Court of the United States. The judgment of the Court of Appeals was rendered on May 17, 1949, and a timely petition for rehearing was filed, which was denied on July 21, 1949.

THE QUESTIONS PRESENTED

The questions presented by this petition are as follows:

1. Did the Court of Appeals err in ruling that this interrogatory must be answered without considering whether this information could not have been obtained from the seamen themselves?

2. Did the overruling of respondents' exceptions here amount to a violation of their privilege against self-incrimination as granted by the Fifth Amendment to the Constitution of the United States, and set out in General Admiralty Rule 30?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

Respondents rely on the following reasons for the allowance of a Writ of Certiorari:

1. The Court of Appeals for the Fourth Circuit has rendered a decision in conflict with the decision of this Court in *Hickman* v. *Taylor*, 329 U. S. 495, in ruling that this interrogatory should be answered even though there has been no showing of justification for the production of this data.

2. In ruling that this interrogatory must be answered and that the documents called for therein must be produced, even though respondents have claimed their constitutional privilege against self-incrimination, the Court of Appeals has decided a Federal question in conflict with the decisions of this court in *Boyd* v. *U. S.*, 116 U. S. 616; *Ballman* v. *Fagin*, 201 U. S. 186; and other cases cited in the brief filed in support of this petition.

3. In ruling that the wage accounts of the crew of a foreign ship are not the private records of the person making them, which the constitutional provision protects, the Court of Appeals has decided an important question of federal law which has not been, but should be, decided by this court.

WHEREFORE, your petitioners respectfully pray that a Writ of Certiorari be issued out of this Honorable Court directed to the United States Court of Appeals for the Fourth Circuit commanding said court to certify and send to this Court for its review and determination a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket as number 5844, *Nicholas Korthinos et als.* v. *S. S. Niarchos et als.*, and that the said judgment of the Court of Appeals for the Fourth Circuit be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

October , 1949.

S. S. NIARCHOS, MICHAEL PILIAROS, and GERASSIMOS PANAS.

By:

GEORGE M. LANNING,
BARRON F. BLACK,
HUGH S. MEREDITH,
Counsel for Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. .....

NICHOLAS KORTHINOS, EVANGELOS FRANGAKIS, NICHOLAS GALEOS, KONSTANTINE MANOUSOS, JOHN KARAGIANOS, VASILIOS STATHIS, GEORGE LEMONIS, THEODORE ORBHANIDIS, PANGIOTIS LAZAROU, GEORGE XENOS, FORTIS KATSIKAS, VASSILIOS KONTOULAS, NICHOLAS VENIERIS, STAVROS HADJITHERODROU, THEOFRASTOS MELLISSARATOS, ELEFTERIOS ECONOMIDES, CONSTANTINE FOROS,
Petitioners—Cross-respondents,
vs.

S. S. NIARCHOS, as Owner, MICHAEL PILIAROS, his Agent, and GERASSIMOS PANAS, as Master; all being interested in the operation of the Steamship "CAPT. K. PAPAZOGLOU",
Respondents—Cross-petitioners.

SUPPORTING BRIEF

OPINIONS OF THE COURTS BELOW

The opinion of the Court of Appeals is reported in 175 Fed. (2d) 730, and 1949 AMC 1135. The District Court's opinion is reported in 1948 AMC 1676 and may

be found in the appendix to Appellants' brief in the court below (Appellants' App. S, 113), which forms a part of the Appendix record in this court.

JURISDICTION

A timely petition for rehearing was filed in the court below and was denied on July 21st, 1949. The grounds on which the jurisdiction of this court is invoked are stated in the petition at page 5.

STATEMENT OF THE CASE

The essential facts are stated in the petition at page 2.

SPECIFICATION OF ERRORS

The Court of Appeals for the Fourth Circuit erred in the following respects:

1. In ruling that this interrogatory should be answered even though libellants have made no showing of justification or necessity for the production of this data.

2. In ruling that this interrogatory should be answered even though respondents have claimed their privilege against self incrimination.

3. In finding and holding that the wage accounts involved here are not the private records of the person making them which the constitutional provision protects.

4. In failing to find that the wage accounts concerned here are the private records of the master and owner.

5. In holding that under *U. S.* v. *White*, 322 U. S. 694, these records must be produced.

6. In reversing the District Court's ruling on this interrogatory.

ARGUMENT

It is the purpose of this argument to show that the Court of Appeals, in the errors specified against it, has decided an important question of federal law in conflict with the decisions of this court, or if not in conflict with said decisions has decided an important question of federal law which should be settled by this court.

SUMMARY

I. There has been no showing here of any justification or necessity for the production of this data as required by *Hickman* v. *Taylor*, 329 U. S. 495, 509.

II. To be required to answer this interrogatory would be a violation of respondent's constitutional privilege against self-incrimination.

(1) To list these advances would subject respondents to criminal prosecution.

(2) These wage accounts are the private records of the master and owner, and the doctrine of *U. S.* v. *White* is not applicable thereto.

(3) These wage accounts are not public records as to which no constitutional privilege attaches.

(4) There has been no disclosure that amounts to a waiver of this privilege.

I. NO JUSTIFICATION HAS BEEN SHOWN

Attorneys for libellants have made no effort to show

that the information sought by this interrogatory could not have been obtained direct from their own clients for the asking. During the hearing on the possessory libel and during the course of the depositions which followed, several of the libellants testified, and the others were present, but even though the opportunity existed, no questions were directed toward ascertaining what, if any, advances had been made. Obviously here these advances were an afterthought. Libellants might just as well have asked, "Do you owe me any money? If so, when and where did the debt arise? What is the amount?" If libellants themselves do not have any information as to these alleged advances, then they can certainly have no personal convictions as to these matters. At the end of each voyage they received without objection copies of the same wage accounts that are sought here. Likewise they accepted without objection the amounts shown to be due on said accounts, and receipted in full for all wages due.

In *Hickman* v. *Taylor*, 329 U. S. 495, 509, this court held that all interrogatories do not have to be answered as a matter of right and that a party is not entitled to the discovery of documents without a showing of "good cause". It is significant to note the language of the late Mr. Justice Murphy in this case:

> " . . . We are thus dealing with an attempt to secure the production of written statements and mental impressions contained in the files and the mind of the attorney Fortenbaugh without any showing of necessity or any indication or claim that denial of such production would unduly prejudice the preparation of petitioner's case or cause him any hardship or injustice. For aught

that appears, the essence of what petitioner seeks either has been revealed to him already through the interrogatories or is readily available to him direct from the witness for the asking." (p. 509)

* * *

" . . . No attempt was made to establish any reason why Fortenbaugh should be forced to produce the written statements. There was only a naked, general demand for these materials as of right and a finding by the District Court that no recognizable privilege was involved. That was insufficient to justify discovery under these circumstances, and the court should have sustained the refusal of the tug owners and Fortenbaugh to produce." (p. 512).

In the instant case, as in *Hickman* v. *Taylor*, supra, there has been no attempt to give any reason why these accounts should be produced, but only a "naked, general demand" therefor. It is earnestly submitted that the Court of Appeals erred in ruling that the libellants are entitled to this information as a matter of right. A stronger case exists here for not requiring respondents to divulge information which is readily available from the libellants themselves, than in a case where it must be obtained from third party witnesses as in the Hickman case.

II. SELF INCRIMINATION

There is no doubt but that libellants are here seeking the discovery of advances made contrary to Title 46 U. S. Code, Section 599. This section is worded in part as follows:

> "(a) It shall be unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same . . . Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than twenty five Dollars nor more than One Hundred Dollars, and may be imprisoned for a period of not exceeding six months at the discretion of the court . . . "

Libellants' proctors have already been furnished with information pertaining to the dates and places of libellants' employment, the amount of their wages, etc., and they now seek to have respondents admit that certain advances were made in the United States before the seamen concerned had had an opportunity to earn the amount of the advance.

Respondents have claimed their constitutional privilege by excepting to this interrogatory on the grounds that to be required to answer the same would tend to incriminate them. There is no question but that this privilege can be claimed in this manner. General Admiralty Rule 30 provides as follows:

> "Either party may object by proper pleadings to answering any allegation contained in any pleading or interrogatory filed by the other party, which will tend to expose him, it or them to any prosecution or punishment for crime or for any penalty or any forfeiture of his, its or their property for any penal offense."

This procedure was followed in *Re Knickerbocker*

Steamboat Company (*The General Slocum*), 139 Fed. 713 (SDNY). See also *Pollack* v. *The Laura*, 5 Fed. 133, Aff. 114 U. S. 411, wherein it was invoked by a refusal to answer the allegations of a libel.

(1) To list these advances would subject the respondents to criminal prosecution.

The first part of this interrogatory calls on the respondents to *list* all advances made during the whole period of libellants' employment, giving the date, the place, the amount, etc. To require respondents to list this information would be to require them to divulge information which could later be used against them in criminal prosecutions.

The rule is well established that the Fifth Amendment to the Constitution, which protects persons against being compelled to give evidence against themselves must be given a broad construction in favor of the right which it was intended to secure. *Gouled* v. *U. S.*, 255 U. S. 298; *Arndstein* v. *McCarthy*, 254 U. S. 71; *Counselman* v. *Hitchcock*, 142 U. S. 547; *Boyd* v. *U. S.*, 116 U. S. 616. Nor is there any question but that this protection applies equally as well to civil as it does to criminal proceedings. *Arndstein* v. *McCarthy*, 266 U. S. 34.

The Court of Appeals failed to comment on the first portion of this interrogatory which boldly requests the respondents to *list all advances made*, but instead confined its discussion to the second portion, which deals with the production of the wage accounts. The Court of Appeals has ruled that this interrogatory must be answered on the authority of *U. S.* v. *White*, supra. Certainly this case, which deals solely with the production of documents, is no authority for the holding that

all advances must be listed. To require respondents to comply with so bold a request would amount to saying that no constitutional privilege exists as to them.

> (2) These wage accounts are the private records of the master and owner, and the doctrine of *U. S.* v. *White* is not applicable thereto.

The second part of this interrogatory calls on respondents to produce the wage accounts of each of the libellants. The Court of Appeals in its opinion states that "The privilege against self-incrimination has no application to the records of a vessel, which are not the private records of the person making them, which the constitutional provision would protect", and has cited *U. S.* v. *White*, supra, in support of this statement.

At the outset it should be noted that the wage accounts which are called for here are no more the records of the vessel than are the accounts of an individual's business the records of the business, and not his own records. There is no association here such as the labor union which was dealt with in *U. S.* v. *White*. All we have is a private individual owning a vessel who has turned over the custody of his vessel to another individual to operate it. The owner obtains business for his vessel, and the master operates it. At the end of each voyage the master pays the crew out of money furnished to him by the owner. The master prepares the crew's wage accounts in triplicate, using one sheet for each man, and when they are paid off, the individual concerned is given one copy, one copy is sent to the owner, and the third copy is retained by the master. When the master leaves the ship to go to another ship or to go home, he takes these accounts with him so that he will always have them

available in case some dispute arises as to how he has spent the owner's money. If these accounts are not the private property of the master and the owner, then whose property are they? It is impossible for a vessel to own any property, hence no comparison can be made between a vessel and an association such as that found in *U. S.* v. *White*, supra. Neither can there be any comparison between a vessel and a corporation such as the Supreme Court was concerned with in *Hale* v. *Henkel*, 201 U. S. 43. None of the reasons which were given by this court in *U. S.* v. *White*, supra, for extending the corporation doctrine to include labor organizations are applicable to the instant case. In the White case this court set up a test by which it may be determined whether a particular *organization* can invoke this privilege. The test is worded as follows:

> "The test, rather, is whether one can fairly say under all the circumstances that a particular type of organization has a character so impersonal in the scope of its membership and activities that it can not be said to embody or represent the purely private or personal interests of its constituents, but rather to embody their common or group interests only." (p. 701).

Certainly there is no similarity between a vessel, such as the "CAPTAIN K. PAPAZOGLOU" and an organization composed of many members with activities and property of its own.

The operation of the "CAPT. K. PAPAZOGLOU" can be compared to any small individually owned business, and there is no question but that this privilege can be invoked by the owner of such a business. *Boyd* v.

U. S., supra; *Ballman* v. *Fagin*, 200 U. S. 186. But even if we go so far as to say that its operation is comparable to that of a small business partnership, this privilege can still be invoked by either or all of the partners. In *U. S.* v. *Brasley*, 268 Fed. 59, the U. S. District Court for the Western District of Pennsylvania held that three individuals engaged in the operation of a retail shoe store could claim this privilege. Our remaining inquiry, then, is how far has this privilege been limited by *U. S.* v. *White*, supra. We have read all of the cases in which *U. S.* v. *White*, supra, has been cited, and have found only one case in which an attempt was made to apply its doctrine to a small business partnership. This case, *In re Subpoena Duces Tecum No. 6895*, 81 Fed. Supp. 418 (N. D. Cal.) (1948), dealt with a subpoena which had been issued against one of the partners of a small family partnership for the production of certain partnership records. The other partners made a motion to quash on the ground that the production of said records would violate their privilege against self-incrimination. The partner producing the records was protected against incrimination by an immunity statute, hence his privilege was not before the Court. The Court in holding that the doctrine of *U. S.* v. *White* was inapplicable to the records of such a partnership had the following to say at page 420:

> "(2) In general, it may be properly said that each partner in a partnership is a co-owner of all partnership property with equal rights of possession and with *no other* power of possession without the consent of the other partners. 47 C. J. 783; Sec. 2419 Civil Code of California. While ownership and possession is shared, it is none

the less personal. It cannot be denied that the records here subpoenaed are the common personal papers of the partners.

"It is contended by the Government, in effect, that the partnership is an association or entity of the association type and that the partners, in creating it, relinquished their several sole and exclusive rights to severally possess its property and papers. It is further contended that by the creation of the partnership, each partner has put it within the power of the other partners to have possession and control of the partnership records, thus disabling himself from the benefits of the Fourth Amendment. The partnership is a collective group, the Government says, which by pooling separate individual financial resources, acquires an economic power not previously possessed by the partners individually.

"(3, 4) But the '*right of the people* to be secure in their persons, houses, papers, and effects' is recognized and protected by the Fourth Amendment. While the right is personal, it is not so limited that more than *one* person may not exercise it with respect to the same papers or effects. It is only when a group or association of persons is 'so impersonal in the scope of its membership and activities that it cannot . . . represent the purely private or personal interests of its constituents,' that the right is unavailable.

"(5) I am of the opinion that the doctrine of *United States* v. *White*, supra, cannot be extended to the members of a partnership such as 'O. Casperson & Sons,' whose only purpose is to

conduct the personal business of the partners and to divide and share their profits and losses for their mutual benefit and protection."

It is argued by libellants that the owner cannot claim this privilege since the master is the one who paid the advances and who made out the wage accounts. The master here was expending the owner's money, and the owner was furnished with a copy of the accounts. Certainly these accounts are as much the private records of the owner as they are of the master. The owner, himself, as well as the master, is made liable for the penalty under the statute, and it is his privilege and not the privilege of the master that he has claimed.

3. These wage accounts are not public records as to which no constitutional privilege attaches.

Libellants argue that the respondents are required by Title 46, U. S. Code Section 642 to keep such records, and hence they are *public records* as to which no privilege attaches. They have cited *Shapiro* v. *U. S.*, 335 U. S. 1 (1948), in support of this position. *Shapiro* v. *U. S.* was a five to four decision of this court in which it was held that certain business records which were required to be kept by the Emergency Price Control Act were public records as to which no constitutional privilege attached. Even if this case was applicable in other respects, there is no provision in this statute requiring masters of foreign ships to keep such accounts. Title 46, U. S. Code, Section 642 does not apply to masters of foreign vessels. This section provides that "every master" before paying off or discharging any seaman, shall deliver to him or to the Shipping Commissioner a

full and true account of his wages, and Title 46, U. S. Code Section 713 defines the word "master" as used in this section as being "every person having command of any vessel belonging to *any citizen of the United States*". Since the "CAPTAIN K. PAPAZOGLOU" is owned by an alien, it is obvious that this section is not applicable to the instant case. Those portions of the Seaman's Act which do apply to foreign owned ships while in American waters, such as Title 46 U. S. Code, Sections 597 and 599, specifically so provide. The law is well settled that American statutes of this type apply to foreign owned ships only when they expressly so provide. *The Hannover*, 248 N. Y. 231, 162 N. E. 15; *The Elswick Tower*, 241 Fed. 706 (SDGa.); *The Montapedia*, 14 Fed. 427 (DCLa.); *U. S.* v. *Kellum*, 7 Fed. 843 (CCNY).

4. There has been no disclosure that amounts to a waiver of this privilege.

Nor can it be said that there has been a disclosure here that amounts to a waiver of this privilege. It is argued by proctors for libellants that since the libellants were each furnished with a copy of their wage accounts at the time that they were paid off, respondents thereby waived this privilege. The case of *Arndstein* v. *McCarthy* went to the Supreme Court three times. The decisions are found at 254 U. S. 71, 262 U. S. 355, and 266 U. S. 34. In the first case it was argued that Arndstein, a bankrupt, had waived his privilege against being questioned as to the assets of his estate after he had furnished a schedule of said assets, but this court held that there had been no such waiver. In the second case, it was argued that since Arndstein had answered

certain questions as to the assets of his estate, he could not thereafter refuse to answer other related questions, but this court again held that there had been no disclosure which would prevent his claiming this privilege. The third case held that this privilege was properly applicable to a civil bankruptcy proceeding in which the discovery of a bankrupt's estate was sought. Certainly, if it is applicable to the discovery of a bankrupt's estate, it is applicable to the discovery of respondents' estate in the instant case.

CONCLUSION

It is respectfully submitted that the Court of Appeals has rendered a decision in conflict with *Hickman* v. *Taylor*, supra, in holding that this interrogatory must be answered as a matter of right even though there has been no showing of justification. It is further submitted that the Court of Appeals, insofar as it has overruled respondents' exceptions to this interrogatory on the grounds of self incrimination, has decided a federal question which, if not in conflict with *Boyd* v. *U. S.*, supra; *Ballman* v. *Fagin*, supra, and other cases cited herein, is an important question of constitutional law which should be decided by this court.

The Court of Appeals has extended the doctrine of *U. S.* v. *White*, supra, far beyond its clear meaning. To apply this doctrine to the private business records of the master and owner of a vessel such as the "CAPTAIN K. PAPAZOGLOU", constitutes a complete wiping out of the constitutional privileges of these two individuals, who have elected to operate a ship rather than to sell coal or peanuts. Surely, the type of business an in-

dividual engages in cannot logically determine his right to be protected under the constitution.

The question is directly posed as to whether shipowners and masters are to be placed in a separate class, the members of which are not to have the benefit of the constitutional provision against self-incrimination. In this respect we submit that the case is one of vital importance.

This court has always been diligent in guarding the rights of an individual; in fact, it has been frequently the only haven of the weak and oppressed. It is earnestly submitted that this is a case where the writ should be granted, and a full investigation made of the action of the Court of Appeals in refusing to protect these respondents and in justifying this refusal on unsound reasoning.

Respectfully submitted,

GEORGE M. LANNING,
BARRON F. BLACK,
HUGH S. MEREDITH,
Counsel for Petitioners.

Sample Copy of Wage Account Form

S.S. **No.**

Voyage No.:

From.....

to.....

Statement of Account of.....

Employed as.....

From..... 19....., to.....19.....

at monthly wages of.....

paid up to....., on the.....19.....

Reason of settlement.....

General Conduct during Employment.....

.....

Wages earned for..... months..... days.....		$.....
Other Earnings (except overtime).....		.....
.....		" .....
TOTAL EARNED		$.....
LESS DEDUCTIONS		
Advance at beginning of voyage.....	"	
Advances taken during the voyage.....	$.....	
at.....	"	
at.....	"	
at.....	"	
at.....	"	
at.....	"	
at.....	"	
at.....	"	
at.....	"	
at.....	"	
at.....	"	
Cigarettes.....	"	
Penalties.....	"	
Total deductions.....		$.....
BALANCE.....		$.....
Plus Overtime per list attached.....		" .....
Particular payment / deduction		$.....
		" .....
BALANCE DUE AT DAY OF SETTLEMENT.....		$.....
at..... on.....		

I hereby declare that I have been paid at..... on.....

.....

and that having received all wages and other sums due me, I have no further claim against the S.S.....her owners, agents or managers.

at..... 19 .....